

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIM COMER, et al.,

Plaintiffs,

Hon. Richard Alan Enslen

v.

Case No. 1:04-cv-00108

WALMART STORES, INC.,

Defendant.

REPORT AND RECOMMENDATION

This matter is before the Court on Defendant Wal-Mart Stores, Inc.'s Motion to Dismiss Six Plaintiffs for Failure to Prosecute and/or to Comply with Orders of This Court and the Federal Rules (Dkt. 168 in 1:04cv108). Oral argument was heard on March 10, 2005. The motion seeks to have dismissed with prejudice four Plaintiffs from this matter and two from the case of *Ramsey, et al. v. Wal-Mart, Inc.*, Case No. 1:02-cv-955, with which this case was consolidated for purposes of discovery.

At a hearing held on December 14, 2004, and in a subsequent written order, the undersigned expressly warned six Plaintiffs in these two cases that their continued failure to produce responses to discovery would result in the dismissal of their claims with prejudice. See 12/17/04 Order (Dkt. No. 311 in 1:02-cv-955 and Dkt. No. 152 in 1:04-cv-108) (failure to comply would result in "recommend[ation] that those Plaintiffs be dismissed for want of prosecution"). These Plaintiffs were given until December 31, 2004, to comply fully with the Court's prior discovery orders and to

produce complete responses to Defendant's outstanding discovery. Four Plaintiffs in Comer (Gresham, McCune, Mickelson, and Schuch) have failed to answer discovery or respond as required by this Court's December 17, 2004 Order (this was to happen by December 31, 2004). As such, as stated at the March 10, 2005 hearing, the undersigned recommends that Defendants' motion (Dkt. 168) be granted and that the claims of Plaintiffs Gresham, McCune, Mickelson, and Schuch be dismissed with prejudice.

Respectfully submitted,

Date: March 18, 2005

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).